STATE OF DELAWARE
PUBLIC EMOPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	)	
Charging Party,	)	
	)	
v.	)	**ULP No. 01-07-324**
	)	
STATE OF DELAWARE, DEPARTMENT OF CORRECTION,	)	
Respondent.	)	

PROBABLE CAUSE DETERMINATION

The State of Delaware, Department of Corrections ("State") is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994 ("Act"). The Delaware Correctional Officers' Association ("DCOA") is an employee organization within the meaning of Section 1302(h) of the Act and the exclusive representative of certain employees of the DOC, as defined in Department of Labor Rep. Case No. 1(h), within the meaning of Section 1302(j) of the Act.

The unfair labor practice charge, as amended and refiled on July 24, 2001, alleges conduct by the State involving the application of an ion scan (a test which indicates the presence of drugs) on or about April 11, 2001. The charge alleges that the test: 1) was discriminatorily applied based upon sex; 2) violates Article 45 of the collective bargaining agreement; 3) is untrustworthy and unreliable; 4) does not establish reasonable suspicion pursuant to State law; 5) is unsupported by regulations mandated by the collective bargaining agreement and State law; and, 6) threatens the integrity and stability of DCOA in violation of 19 Del.C. Section 1307(a)(1) and (a)(2).

In its Answer filed on August 2, 2001, the State denies the material allegations set forth in the Charge. Under New Matter, the State alleges that: 1) on September 11, 1997, the State informed DCOA that ion testing was to be effective October 14, 1997, and provided DCOA with a copy of the applicable Policy (No. 8.44) on or about October 14, 1997; 2) Policy No. 8.44 provides that a positive test result would result in the affected employee being strip searched in accordance with Policy No. 8.32; 3) shortly thereafter DCOA filed a grievance; 4) on April 29, 1998, an Arbitrator concluded the ion scan testing was reasonable and, "that the State did not violate the contract by requiring a strip search after a positive test result . . .."; 5) having been filed on July 24, 2001, more than 180 days after the Association had knowledge of the implementation of the ion scan policy and more than 180 days after the Arbitrator's decision upholding the policy, the amended Charge should be dismissed as untimely.

In its Response filed on August 8, 2001, the Association denied the material allegations set forth under New Matter and maintains that, not having been filed within 180 days of the September 11, 2000, testing, the Charge is timely filed.

DCOA also contends that, because the State's Answer was not verified by an employee of the Department of Correction and the two (2) individuals alleged to have committed the actions which are the basis of the Charge, the Answer does not comply with PERB Rules. Consequently, the Answer is improperly filed so that the averments set forth in the Charge should be considered admitted and the charge sustained.

APPLICABLE STATUTORY PROVISIONS

19 Del.C. Section 1307, Unfair labor practices, provides, in relevant part:

> (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
>
> (1) Interfere with, restrain or coerce any employee
>
> in or because of the exercise of any right guaranteed

under this chapter.

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.

ISSUE

Whether the conduct alleged in the Charge constitutes probable cause to believe that an unfair labor practice may have occurred?

DISCUSSION

The Answer by the State was properly filed pursuant to PERB Regulation 5, Unfair Labor Practice Proceedings, Section 5.3, Answer to Charge.

The Charge alleges certain conduct on the part of the State. There is no allegation that the conduct was taken "in or because of the exercise of any right guaranteed under this Chapter", as required by 19 Del. C. Section 1307(a)(1).

Consequently, considered in a light most favorable to DCOA, the allegations set forth in the Charge, if proven, do not establish that DOC interfered with, restrained or coerced any employee because of the exercise of any rights guaranteed under this Chapter, as required by Section 1307(a)(1).

Nor, considered in a light most favorable to Charging Party, do the allegations set forth in the Charge establish that the State interfered with or assisted in the formation, existence or administration of any labor organization, as required by Section 1307(a)(2).

For these reasons, it is unnecessary to consider whether or not the Charge is timely filed.

DETERMINATION

Consistent with the foregoing discussion, there is no reason to believe that an unfair labor practice may have occurred.

Accordingly, the Charge is dismissed with prejudice.

August 20, 2001
(Date)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.,
Executive Director